

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO : 26611 of 1995

31-10-2006

Between:

N.Balakrishna Reddy, S/o M.P.Appi Reddy, aged about 40 years,
Working as Junior assistant, O/o A.P.Employees Welfare Fund, Dist.
Committee, Cuddapah and residing at near Kotiredy Qts., Balajinagar,
Cuddapah, Cuddapah District.

..... PETITIONER

AND

1 Addl. Secretary to Government, Finance & Planning (FI.Wing.
Admn.I) Dept. Government of Andhra Pradesh, Secretariat, Hyderabad,
and three others.

.....RESPONDENTS

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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ORDER:

Petitioner, who was sponsored by the Employment Exchange on
04-06-1986, was considered for the post of Junior Assistant in
A.P.Employees Welfare Fund District Committee, Kadapa, which is a
Society registered under the Societies Registration Act and being run
under the control of 1st respondent-Government of Andhra Pradesh,
Finance and Planning Department. The third respondent-District
Treasury Officer, Kadapa, who is the President of the said Employees

Welfare Fund Committee, sent a call letter dated 08.07.1986 to the petitioner asking him to appear for a Written Test on 20.07.1986. The petitioner was later selected along with 14 other candidates and the selections were notified by the 3rd respondent in Proceedings No. 2807/3/86 dated 09.10.1986 and the same were approved by the 2nd respondent-District Collector, Kadapa, who is the President of the said Employees Welfare Fund Committee. The petitioner was later appointed by the 3rd respondent-District Treasury Officer, as Junior Assistant by Proceedings in RC No. APEWF/86, Dated 13-10-1986. In pursuance of the said proceedings, he joined service on a consolidated salary of Rs.300/- per month initially. Subsequently, the pay of the petitioner was enhanced from Rs.300/- to Rs.500/- per month with effect from 20-06-1988 through the Proceedings dated 29-10-1988. The grievance of the petitioner is that after his completing about 9 years of Service in the Department, the 3rd respondent-District Treasury Officer, Kadapa, issued the impugned Proceedings in RC No. APEWF/95 dated 18-11-1985, terminating his service and appointing 4th respondent-K.Subbarayudu, who was a retired Sub-Treasury Officer, on a full Time Basis. Hence, the present writ petition has been filed by the petitioner questioning the termination of his service and sought for a declaration that he is entitled to regularization of his service.

A counter affidavit has been filed by the Joint Secretary to the Government in Finance and Planning (Finance Wing) Department, Hyderabad, *inter alia* contending that there were no sanctioned posts in the Andhra Pradesh Employees Welfare Fund Committee and that the petitioner's termination was, therefore, justified. As regards the regularization of the petitioner, it is stated therein that the petitioner's case does not fall within the purview of G.O.Ms.No.212, Finance and Planning (Fin.PC.III) Department, dated 22-04-1994 and sought to justify the appointment of 4th respondent-Subbarayudu in place of the

petitioner by relying upon the memo dated 10-05-1995 said to have been issued by the 1st respondent-Government.

I have heard the learned counsel for the petitioner and the learned Government Pleader for Finance and Planning.

The impugned proceedings show that when the petitioner made a representation on 16-04-1992 that his case may be considered for appointment as Junior Assistant on daily wage basis in the said Welfare Fund Committee, it was forwarded to the Director of Treasuries and Accounts, Andhra Pradesh, Hyderabad. In response thereto, by issuing memo dated 10-05-1995, the Government directed termination of the petitioner's service as there is no sanctioned posts of Clerks in the said Welfare Fund Committee. Basing on the said Memo, the impugned proceedings were issued by the 3rd respondent terminating the service of the petitioner. The impugned proceedings further says that the 4th respondent- K.Subbarayudu, who was a retired Sub-Treasury Officer, Kadapa has made a representation on 06-11-1995 and on the strength of the said representation, he was appointed on full time basis on payment of remuneration of Rs.1000/- per month to assist the 3rd respondent-Member Secretary and District Treasury Officer, Kadapa, in place of the petitioner.

This Court, on 24-11-1995, granted interim direction to continue the petitioner in service by suspending the operation of the impugned proceedings. The said order was subsequently made absolute on 13-06-1997.

On the directions issued by me, the learned Government Pleader has placed before me a letter dated 27-10-2006 addressed by the Deputy Director, District Treasury Office, Kadapa to the Assistant to Government Pleader (Fin), wherein it is mentioned that in pursuance of the interim directions granted by this Court, the petitioner was permitted to report for duty and the service of 4th respondent-K.Subba Rayudu, was terminated by proceedings in Rc.No.STO/APEWF/95 dated 12-12-

1995. It is further mentioned therein that the petitioner is continuing to work in APEWF section.

From the pleadings and the material placed before me, I am unable to countenance the action of the respondents in terminating the service of the petitioner, who was appointed after going through the required process of selection viz., sponsoring from the employment exchange, passing of the written test and getting selected. The only reason discernable from the stand taken by the respondents in terminating the service of the petitioner appears to be that there were no sanctioned posts. But, curiously, on the representation made by the petitioner for continuing him on daily wage basis, instead of being employed on a consolidated pay basis, the respondents have terminated his service. What is more curious in the impugned proceedings is that while on one hand the petitioner's services were terminated, on the other hand, 4th respondent-K.Subbarayudu was appointed on a temporary basis to discharge the same work as the petitioner was earlier discharging. This according to me is wholly unpalatable. It is quite obvious even from the contents of the impugned proceedings that the 4th respondent-Subbarayudu was appointed at his request. The above said action of the 3rd respondent is wholly unjustifiable and does not stand the test of reasonableness and fair play.

It is not the case of the respondents that there is no work to be provided. On the other hand, as already mentioned, while terminating the service of the petitioner, employment is provided to the 4th respondent-K.Subbarayudu which fact itself clearly shows that work need very much exists. In my considered view, the impugned order is vitiated by arbitrariness and irrationality. The impugned proceedings is therefore, liable to be set aside and the respondents are directed to continue the petitioner in terms of his appointment order dated 13-10-

1986. As regards the relief sought for by the petitioner for regularization of his service, the petitioner placed strong reliance on G.O.Ms.No.212 dated 22.04.1994. The learned Government Pleader submitted that Condition No.5 of G.O.Ms.No.212 envisages that the regularization/absorption shall be against the sanctioned posts and that since there are no sanctioned posts in the Department in which the petitioner worked, he is not entitled to the relief of regularization.

_Condition No.5 of G.O.Ms.No. 212 reads thus:

1.
2.
3.
4.
5. Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load excluding the vacancies already notified to the Andhra Pradesh Public Service Commission / district Selection Committee.
6.

From a reading of the above condition, it is clear that the absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load. But, it is not required that there must be sanctioned posts, as submitted by the leaned Government Pleader. The very fact that the petitioner was appointed following the selection process and that even on his termination, the 4th respondent-K.Subbarayudu was appointed clearly shows that there is a clear vacancy and the required work load. It is therefore, incumbent on the respondents to consider the case of the petitioner for absorption/regularization in terms of G.O.Ms.No.212 dated 22-04-1984 provided that he satisfies all the other conditions stipulated in the said G.O.

For the aforementioned reasons, the respondents are directed to continue the petitioner in the post in which he is presently working in pursuance of his appointment order as well as the interim orders granted

by this Court, which were subsequently made absolute as
aforementioned. The respondents are also directed to consider the case
of the petitioner for absorption in terms of G.O.Ms.No.212 dated 22-04-
1994.

Subject to the above observations and directions, the writ petition
is disposed of. No costs.

31-10-2006

Mjl/*